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No. 73-1416

In the

Supreme Court of the United States

OCTOBER TERM, 1973.

TRANS WORLD AIRLINES, INC. and AMERICAN AIRLINES, INC.,

Petitioners,

vs.

ANNE B. ZIPES, PATRICIA A. SANTINI, PAMELA J. DAILING, DARLENE PRESTON, BONNIE PULSKAMP, SUSAN PRASCIUNAS, MARSHA JIMERSON, PHYLLIS STILL, ELIZABETH KORENGOLD, CHERYL ROSSI, and AIR LINE STEWARDS and STEWARDESSES ASSOCIATION, LOCAL 550, TWU, AFL-CIO,

Respondents.

ANSWER TO AIRLINES' REPLY BRIEF

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INTRODUCTION

In their Reply to respondents' Brief opposing certiorari, the Airlines assume a posture of outraged innocence and argue anew for issuance of the Writ.

Most of those arguments either have been answered in respondents' Brief in Opposition, or are so unpersuasive as to require no answer. However, their Reply does create a smoke screen which should be dispelled.

ARGUMENT

I.

The Airlines' contention (Reply Brief, p. 4) that denial of certiorari here "would be inconsistent with the granting of *certiorari* in the *Western Addition* case" grasps for a straw which does not exist. Petitioners there (the Solicitor General, on behalf of the NLRB, and the employer, Emporium Capwell Co.), unlike the Airlines here, do not propose superimposition of union collective bargaining powers upon Title VII actions. There, both petitioners recognize that Title VII remedies are independent of the collective bargaining process. *See* Solicitor General's petition, pp. 16, 21; Emporium Capwell Co.'s petition, p. 8. In its recently-filed brief on the merits (p. 5), Emporium Capwell speaks to the function of the exclusivity principle:

> . . . Section 9 in no way prevents minority employees from combatting discrimination through the remedies provided by statute. Therefore, there is no need to "reconcile" the two statutes [the LMRA and Title VII] or to suspend the specific language of one statute because of the broad declarations of policy in the other.

II.

The Airlines protest (Reply Brief, p. 1) what they call respondents' "abusive language." The facts speak for themselves:

1. "Blatant falsehood"—Each of the Notices of settlement hearings prepared by both petitioners in 1971 as well as in 1972 informed the classes that the "plaintiffs" wanted to settle. The Union attorney admitted only later

that he had never once spoken to any of the discharged stewardess-plaintiffs on the subject of settlement.

2. "Fraud on the stewardesses and on the courts"—The misrepresentation in the Notices, part of the "sales pitch" to the classes of discharged stewardesses, necessarily discouraged objection to the settlements. Judge Cummings, in his opinion on the first appeal here,* ruled that the "real party in conciliation endeavors is the employee", who is "completely free to accept or reject the proposals of union or employer as well as the . . . Commission." 455 F.2d, at 106. Then, on the question of adequacy of representation, he stated: "The involvement of the stewardesses' own counsel [Union counsel] justifies the *assumption* that their interests were adequately protected in the settlement agreement . . ." (Emphasis added) 455 F.2d, at 107. Had he known that the Notices were untrue, he could not have made that assumption.

3. "Illicit bargains"—Any settlement of litigation effected by a representative, who only later admits representing conflicting interests, without consultation with or the knowledge of the named plaintiffs—the real parties in interest—is necessarily illicit.

4. "Woefully inadequate" representation—The Seventh Circuit, applying "ordinary" standards, adjudged the Union's conflict-ridden representation inadequate. It held that, in negotiating settlements on behalf of the discharged stewardesses (in which some of their claims were relinquished), the Union in fact had been representing and protecting its working members (the successors to the discharged stewardesses). It ordered the Union removed as representative of the classes. The record fully supports

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* *Air Lines Stewards and Stewardesses Association* v. *American Airlines, Inc.*, 455 F.2d 101 (7th Cir. 1972).

these rulings on the quality of the Union's class representation.

5. "Secret collaboration"—Two sets of settlements were negotiated here—the first without any notice or hearings required by Rule 23, and both without knowledge of the named individual plaintiffs. As to these real parties in interest, the settlements were indeed "secret", and respondents' characterization is well within the realm of fair comment.

III.

The Airlines' notion (Reply Brief, p. 4) that the Seventh Circuit supposedly is inclined to permit a settlement to be negotiated by a representative chosen by the "happenstance of the filing of a District Court complaint" is plainly absurd. The Seventh Circuit made no ruling concerning who might be an adequate representative of the classes on remand, except that the Union should be replaced. Even should one or more of the present individual named plaintiffs be chosen as class representatives, their authority to so act will derive from a District Court order based on factual adequacy of their representation of the classes, and not simply from their participation as plaintiffs. Petitioners' continued refusal to recognize the discharged stewardess-plaintiffs' entitlement to control the conduct and possible settlement of their own Title VII class actions cannot elevate these cases to a stature warranting Supreme Court review.

IV.

The Airlines' attack (Reply Brief, p. 2) on respondent Zipes' and Preston's communications with their fellow discharged stewardesses attempts to divert attention from the very substantial class disapproval of the settlements.

Mrs. Zipes, neither a party nor counsel, was not subject to the prohibitions of Local Rule 22 of the Northern District of Illinois. The District Judge found that she had acted in good faith (Vol. II Supp. App. 378) and had no knowledge of Rule 22 (Vol. II Supp. App. 376). Even Airlines' counsel seconded this latter finding (Vol. II Supp. App. 377).

Similarly, Mrs. Preston was unaware of that Rule (Vol. II Supp. App. 189). As a named plaintiff she wrote to class members expressing her outrage at the settlement in the American action after the mailing to class members of Notices bearing her name and falsely stating that she wanted to settle. She acted openly, using the mailing list supplied to her by a Union officer (Vol. II Supp. App. 193, 244-45). Union counsel knew that she was communicating with the class and receiving affidavits objecting to the settlement (Vol. II Supp. App. 188). The Union found nothing wrong with using Mrs. Preston as a liaison with the discharged stewardesses when it needed her help (See, e.g., Vol. II Supp. App. 185 et seq.), but registered objection when she informed the class that the Union had acted unilaterally.

In any event, the District Court overruled petitioners' objections to introduction of the affidavits opposing the settlements, obtained by Zipes and Preston (Vol. II Supp. App. 188, 377), and the record is devoid of proof that those communications were in fact misleading.

CONCLUSION

The Airlines' Reply, like its Petition, is without substance. Elementary justice requires that the classes of discharged stewardesses be afforded their day in court at the earliest possible time. The Writs should be denied.

Respectfully submitted,

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